

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ESTATE OF W. SCOTT CREACH, by
and through IMOGENE CREACH,
Personal Representative; IMOGENE
CREACH, individually and as Personal
Representative of the ESTATE OF W.
SCOTT CREACH; ALAN CREACH;
ERNEST CREACH; SERENA
LEONARD; and EDITH CARROLL,
individually,

Plaintiffs,

v.

SPOKANE COUNTY
WASHINGTON; BRIAN HIRZEL,
and OZZIE KNEZOVICH,

Defendants.

NO: CV-11-432-RMP

ORDER GRANTING PARTIES'
STIPULATED MOTION TO
EXPEDITE AND GRANTING IN
PART AND DENYING IN PART
PARTIES' STIPULATED MOTION
FOR A PROTECTIVE ORDER

This matter comes before the Court on the parties' stipulated motion for
entry of a protective order, **ECF No. 15**, and accompanying motion to expedite
hearing of the motion for a protective order, **ECF No. 17**.

ORDER GRANTING PARTIES' STIPULATED MOTION TO EXPEDITE AND
GRANTING IN PART AND DENYING IN PART PARTIES' STIPULATED
MOTION FOR A PROTECTIVE ORDER ~ 1

1 As a preliminary matter, the Court finds that the parties' stipulation
2 constitutes good cause for hearing the motion for a protective order on an
3 expedited basis, as no responsive briefing would be forthcoming. *See* Local Rule
4 7.1 (h) (providing for alteration of time requirements for hearing motions upon a
5 showing of good cause). The Court, therefore, grants the parties' motion to
6 expedite hearing of the motion for a protective order.

7 Proceeding to the issue of the motion for a protective order itself, the Court
8 has reviewed the parties' motion and attached proposed protective order, ECF No.
9 15, as well as the declaration of Heather C. Yakely, counsel for Defendants
10 Spokane County and Ozzie Knezovich, ECF No. 16, and is fully informed.

11 The parties' motion seeks entry of an order broadly protecting "[t]he
12 personnel records and internal affairs reports and/or investigations, financial and
13 tax records, of all deputies of the Spokane County Sheriff's Department[.]" ECF
14 No. 15-1 at 2. The proposed protective order elsewhere defines the records that
15 Spokane County "has designated . . . as confidential" as the following:

16 the personnel, internal affairs, and training records pertaining to
17 deputies of Spokane County Sheriff's Department, and any
18 documents, written or other that contain any personal information
regarding any third party in the above-referenced matter or not a party
hereto but pursuant to a request for release by Plaintiff's counsel

19 ECF No. 15-1 at 2.
20

1 The parties' proposed order provides several forms of protection for the
2 above-defined records. First, the proposed order provides that the documents shall
3 be disclosed only to the parties and their attorneys and attorneys' staff, consultants
4 or experts retained by the parties in the course of this litigation, and any other
5 person with respect to whom the party producing the record has given prior written
6 consent for disclosure. ECF No. 15-1 at 2-3.

7 Second, the proposed order requires that anyone, other than the parties, their
8 attorneys, or their attorneys' staff, who receives records designated as confidential
9 must read and sign a copy of the protective order or a "Confidentiality
10 Acknowledgement" form attached to the proposed order before viewing the
11 protected records. ECF No. 15-1 at 3, 8.

12 Third, the proposed order requires redaction of the following from all
13 documents prior to "providing a copy of the same to Plaintiff's counsel": (1)
14 "social security [numbers], dates of birth, bank account identifications, financial
15 information, and driver's license of any individual, whether a sheriff deputy or a
16 third party"; (2) "the address and phone numbers of Sheriff Deputies or other law
17 enforcement personnel and those individual's [sic] friends and families"; and (3)
18 "[t]he addresses and phone numbers of non-party individuals mentioned,
19 referenced, or noted in any way" in the "personnel records and internal affairs
20

1 reports and/or investigations, financial and tax records, of all deputies of the
2 Spokane County Sheriff's Department[.]” ECF No. 15-1 at 2-3.

3 Fourth, the proposed order requires any of the records designated as
4 confidential to be filed under seal and to be retained on the docket under seal
5 “unless ordered by the Court to be opened.” ECF No. 15-1 at 4. This fourth
6 portion of the parties’ stipulated protective order affects the treatment of future
7 court documents in this case and creates issues for the Court. ECF No. 15-1 at 4-5.

8 Two different standards govern the sealing of documents in civil cases, a
9 “compelling reasons” standard and a “good cause” standard, depending on the type
10 of material or filing at issue. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665,
11 678 (9th Cir. 2009). Given a strong presumption in favor of public access to court
12 documents, a party seeking to seal most judicial records must “articulate []
13 compelling reasons supported by specific factual findings [. . .] that outweigh the
14 general history of access and the public policies favoring disclosure, such as the
15 public interest in understanding the judicial process.” *Kamakana v. City and*
16 *County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotations
17 omitted).

18 By contrast, a party seeking to seal or protect “private materials unearthed
19 during discovery,” *Kamakana*, 447 F.2d at 1180, that may expose a party or person
20 to “annoyance, embarrassment, oppression, or undue burden or expense,” Fed. R.

1 Civ. P. 26(c), bears the lesser burden of showing good cause to seal the document.
2 *See also Pintos* 605 F.3d at 678-79. The good cause standard also applies to
3 situations in which a party who attaches a document that was produced under seal
4 in discovery to a nondispositive motion seeks to maintain the attached document
5 under seal on the court docket. *Phillips ex rel. Estates of Byrd v. Gen. Motors*
6 *Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002) (“when a party attaches a sealed
7 discovery document to a nondispositive motion, the usual presumption of the
8 public's right of access is rebutted”); *Pintos*, 605 F.3d at 678. The *Phillips*
9 exception to the right of public access to court documents applies only to materials
10 attached to nondispositive motions. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331
11 F.3d 1122, 1135 (9th Cir. 2003).

12 The parties’ motion and proposed order do not include a requirement to
13 make any showing of either good cause or compelling reasons to seal documents
14 subject to the protective order. Nor does the order distinguish between documents
15 filed as attachments to dispositive versus nondispositive motions or related
16 briefing. Rather, the motion and proposed order presume that any records
17 designated as confidential by Spokane County because they pertain to sheriff’s
18 deputies or contain “personal information”¹ of a third party shall be sealed unless a
19 Court orders them unsealed. The process proposed in the protective order is not

20 ¹ This term is not defined in the proposed order.

1 consistent with case law requiring the Court to make the necessary findings as to
2 whether either good cause or compelling reasons support sealing the record. *See*
3 *Pintos*, 605 F.3d at 679.

4 With respect to the three other forms of protection for the records presently
5 at issue in this matter, the Court finds the protective order to be reasonable and
6 warranted by the good cause standard of Fed. R. Civ. P. 26(c).

7 Accordingly, **IT IS ORDERED** that:

8 1. The parties' motion to expedite hearing of the motion for a protective order,
9 **ECF No. 17**, is **GRANTED**.

10 2. The parties' motion for a protective order, **ECF No. 15**, is **DENIED IN**
11 **PART** and **GRANTED IN PART**, as set forth above, and the Court enters a
12 version of the parties' protective order as Appendix A to this Order that has
13 been modified in paragraph 6 with respect to filing documents with this
14 Court. The Court further approves the use of the "Confidentiality
15 Acknowledgement" form contained in the record at ECF No. 15-1 at 8.

16 The District Court Clerk is directed to enter this Order and provide copies to
17 counsel.

18 DATED this 24th day of July 2012.

19 s/ Rosanna Malouf Peterson
20 ROSANNA MALOUF PETERSON
Chief United States District Court Judge

Appendix A: PROTECTIVE ORDER

IT IS HEREBY ORDERED that the following procedures shall apply to the personnel, internal affairs, and training records pertaining to deputies of Spokane County Sheriff's Department, and any documents, written or other that contain any personal information regarding any third party in the above-referenced matter or not a party hereto but pursuant to a request for release by Plaintiff's counsel. Spokane County has designated these records as confidential subject to the following provisions:

1. The personnel records and internal affairs reports and/or investigations, financial and tax records, of all deputies of the Spokane County Sheriff's Department (herein "Records"), and shall be produced and used solely for the purposes of this litigation and shall not be disclosed, except pursuant to court order, to anyone except:

1 a. The party(ies), their attorneys and the
2 attorney's employees;

3 b. Consultants and experts retained by any
4 party for the purposes of assisting in the
5 preparation or presentation of claims or
6 defenses;

7 c. Any other person with prior written
8 consent of the party producing the
9 documents.

10 2. All of the foregoing persons, other than the
11 parties' attorneys and their employees, shall
12 be shown a copy of this order and shall sign it
13 or otherwise signify in writing prior to being
14 shown confidential documents that the person
15 has read the order and consents to be bound by
16 its terms. Attached hereto as Exhibit A is a
17 sample copy of a consent form.

18 3. All documents bearing the social security,
19 dates of birth, bank account identifications,
20 financial information, and driver's license of

1 any individual, whether a sheriff deputy or a
2 third party, shall be redacted prior to
3 providing a copy of the same to Plaintiff's
4 counsel.

5 4. All documents bearing the addresses and phone
6 numbers of Sheriff Deputies or other law
7 enforcement personnel and those individual's
8 friends and families shall be redacted prior to
9 providing a copy of the same to Plaintiff's
10 counsel.

11 5. The addresses and phone numbers of non-party
12 individuals mentioned, referenced, or noted in
13 any way in the above-referenced documents
14 (Paragraph 1) shall also be redacted.

15 6. Any party seeking to file or use documents
16 designated as "Confidential" material may only
17 file such documents contemporaneously with a
18 motion to seal such documents pursuant to
19 applicable court rules and other authority,
20 including *Kamakana v. City and County of*

1 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006), *Foltz*
2 *v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d
3 1122 (9th Cir. 2003), and other Ninth Circuit
4 jurisprudence.

5 7. Upon completion of this litigation, all copies
6 of the Records or documents or testimony with
7 references thereto shall, at Spokane County's
8 option, be destroyed or returned to Spokane
9 County's counsel. This is to include all
10 copies reproduced by any party, agent, employee
11 or expert of Plaintiffs and Co-Defendants.

12 8. No documents or information from the Records
13 shall be used for any purpose unrelated to the
14 conduct of this litigation.

15 9. Nothing contained herein shall be construed to
16 prejudice or limit any party's right to use the
17 Records in taking of depositions or at trial to
18 the extent permitted, if at all, under the
19 Rules of Evidence and Civil Procedure.
20

1 10. Nothing in this order shall prevent any party
2 hereto from seeking modification of this order
3 or from objecting to discovery which it
4 believes to be otherwise improper.

5 11. Violation of the terms of this Order, by any of
6 the signators to this agreement, their
7 employees, agents or experts may be subject the
8 violator to terms (monetary and/or injunctive)
9 as well as attorney's fees and costs incurred
10 in enforcing this Order and as the Court deems
11 appropriate.